

U.S. DEPARTMENT OF COMMERCE
Office of Inspector General



**PUBLIC
RELEASE**

*NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION*

*OAR's Undersea Research Program
Awards Were Not Competitively Selected
CFDA No. 11.430*

Audit Report No. ATL-11654-0-0001/March 2000

Office of Audits, Atlanta Regional Office



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EXECUTIVE SUMMARY

The Office of Inspector General has conducted an audit of the fiscal year 1997 criteria, procedures, and practices for soliciting, reviewing, and selecting applications for financial assistance under the National Oceanic and Atmospheric Administration's Office of Oceanic and Atmospheric Research's (OAR) Undersea Research Program. The program is classified as No. 11.430 in the *Catalog of Federal Domestic Assistance*. The audit was conducted as part of a Department-wide review of Commerce's discretionary financial assistance programs initiated at the request of the Chairman of the Senate Committee on Commerce, Science, and Transportation.

Discretionary financial assistance programs are those programs for which federal agencies have the authority to independently determine the recipients and funding levels of the awards. Collectively, these programs involve a significant portion of the Commerce Department's budget and operations, representing approximately \$1 billion annually.

Through the Undersea Research Program, OAR increases the knowledge essential for the wise use of oceanic, coastal, and large lake resources through advanced undersea exploration, sampling, observation, and experimentation. During fiscal year 1997, the program awarded four new grants, five renewals and four supplemental awards, for a total of \$10,892,536. All 1997 awards were made noncompetitively in response to unsolicited proposals.

We found that OAR's criteria, procedures, and practices for the solicitation, review, and selection of the Undersea Research Program award recipients did not fully comply with departmental and NOAA requirements. More specifically, the program was not administered as a competition-based financial assistance program, as required by Departmental Administrative Order 203-26 and Financial Assistance Notice No. 17. Instead, awards were selected on a "sole source," noncompetitive basis, without adequate justifications for such awards.

As a result of these deficiencies, OAR cannot provide reasonable assurance that awards made under the program are merit-based and represent the most effective means of achieving program objectives. By not following competitive award procedures, OAR increases the potential for making questionable or even inappropriate program awards in instances where competition from other sources is available.

The Federal Grant and Cooperative Agreement Act encourages competition to the maximum extent practicable in the award of federal financial assistance and the Department Administrative Order 203-26, *Department of Commerce Grants Administration*, requires that all Commerce financial assistance awards be made on the basis of competitive reviews unless a special waiver is obtained or otherwise justified and documented.

In its response to the draft report, NOAA states that it is committed to ensuring that its discretionary programs are consistent with departmental policy and that the Agency will pursue all options to maximize the use of competition in its grants and cooperative agreements. However, NOAA generally disagreed with the report conclusions regarding the Undersea Research Program, stating that the program effectively operates as a nondiscretionary program because of congressional involvement, and that because of the involvement it follows a strategy of making continuous awards to certain recipients with whom it has developed long-term relationships (see Appendix II).

It is important to highlight here that we recognize that departmental policy allows for noncompetitive awards under certain conditions if the awards can be adequately justified and documented. Unfortunately, *NOAA* files and records did not provide adequate explanations or justifications for these awards. It was therefore difficult to independently see how and why these specific awards were made.

Because NOAA's response did not provide any significant additional data or explanation, we have not modified our recommendations. We reiterate our finding that all fiscal year 1997 awards under the Undersea Research Program were made on a noncompetitive basis, rendering the entire program noncompetitive, which is inconsistent with federal and departmental policy.

We recommend that the Assistant Administrator for Oceanic and Atmospheric Research ensure that financial assistance awards under the Undersea Research Program are made through a competitive merit-based process, *unless otherwise mandated by law or adequately justified*, and that the award process complies with Department policies and procedures and includes the following four elements:

- Widespread solicitation of eligible applications and disclosure of essential application and program information in written solicitations, as required by DAO 203-26, Sections 4.02a. and b., and Financial Assistance Notice No. 17, Sections .01 and .03;
- Independent application reviews that consistently apply published program evaluation criteria, as required by DAO 203-26, Section 4.02h.i;
- Written justifications for award decisions that deviate from recommendations made by application reviewers, as required by DAO 203-26, Section 4.05b; and
- Adequate written justifications for noncompetitive awards, as required by DAO 203-26, Section 4.02i., which should, in the case of sole source awards, thoroughly document appropriate market search efforts to validate the determination that there is only one source available to perform the anticipated award. Also, justifications for noncompetitive awards that are made on a basis other than sole source, e.g., to meet congressional intent or extend an existing award, should reflect the appropriate basis for the lack of competition.

We also recommend that the NOAA Chief Financial Officer/Chief Administrative Officer, as the Director of Office of Finance and Administration, which includes the Grants Management Division, require that grants officer reviews of proposed noncompetitive awards include procedures designed to objectively determine compliance with Federal, Department, and NOAA competitive requirements.

Our recommendations begin on page 12.

INTRODUCTION

The National Oceanic and Atmospheric Administration's mission is to describe and predict changes in the Earth's environment and to conserve and manage wisely the nation's coastal resources. NOAA's Office of Oceanic and Atmospheric Research (OAR) administers the Undersea Research Program, classified as No. 11.430 in the *Catalog of Federal Domestic Assistance (CFDA)*. The program's objective is to increase the knowledge essential for the wise use of oceanic, coastal, and large lake resources through advanced undersea exploration, sampling, observation, and experimentation.

OAR made 13 awards under the Undersea Research Program in fiscal year 1997, totaling nearly \$10.9 million. The awards consisted of four new grants, five renewals and four supplemental awards. The awards were made to the Woods Hole Oceanographic Institution, and to five universities and a public foundation, which operate six regional undersea research centers. The six centers are: the North Atlantic and Great Lakes Center at the University of Connecticut; the Mid-Atlantic Center at Rutgers University; the Southeastern U.S. and Gulf of Mexico Center at the University of North Carolina at Wilmington; the West Coast and Polar Regions Center at the University of Alaska Fairbanks; the Hawaii and Pacific Center at the University of Hawaii; and the Caribbean Marine Research Center at the Perry Foundation in West Palm Beach, Florida. According to program authorization information provided by NOAA's Office of Legislative Affairs and published in the *CFDA*, the FY 1997 awards were made under the authority of the Coast and Geodetic Survey Act and the Outer Continental Shelf Lands Act, as amended.

Discretionary financial assistance programs are those for which federal agency officials have the authority to decide (1) which eligible applicants will receive awards, and (2) the amount of federal financial assistance that will be awarded. The use of competitive selection procedures has been determined to be the most effective method of ensuring that financial assistance awards are made on the basis of merit. One of the primary purposes of the Federal Grant and Cooperative Agreement Act (31 U.S.C. §6301) is to encourage competition in the award of federal financial assistance to the maximum extent practicable in order to fairly and objectively identify and fund, based on merit, the best possible projects proposed by applicants, and thereby more effectively achieve program objectives.

The Office of Management and Budget (OMB) has issued guidelines on administering competition-based financial assistance programs for use by federal agencies. An interagency study group, convened in 1979 by OMB to examine competition in financial assistance programs, determined that financial assistance award processes, to ensure effective competition, should include three basic elements. These elements, which were discussed in OMB's June 1980 report, *Managing Federal Assistance in the 1980's*, and are still applicable, include:

- Widespread solicitation of eligible applicants and disclosure of essential application and program information in written solicitations;
- Independent application reviews that consistently apply written program evaluation criteria; and

- Written justifications for award decisions that deviate from recommendations made by application reviewers.

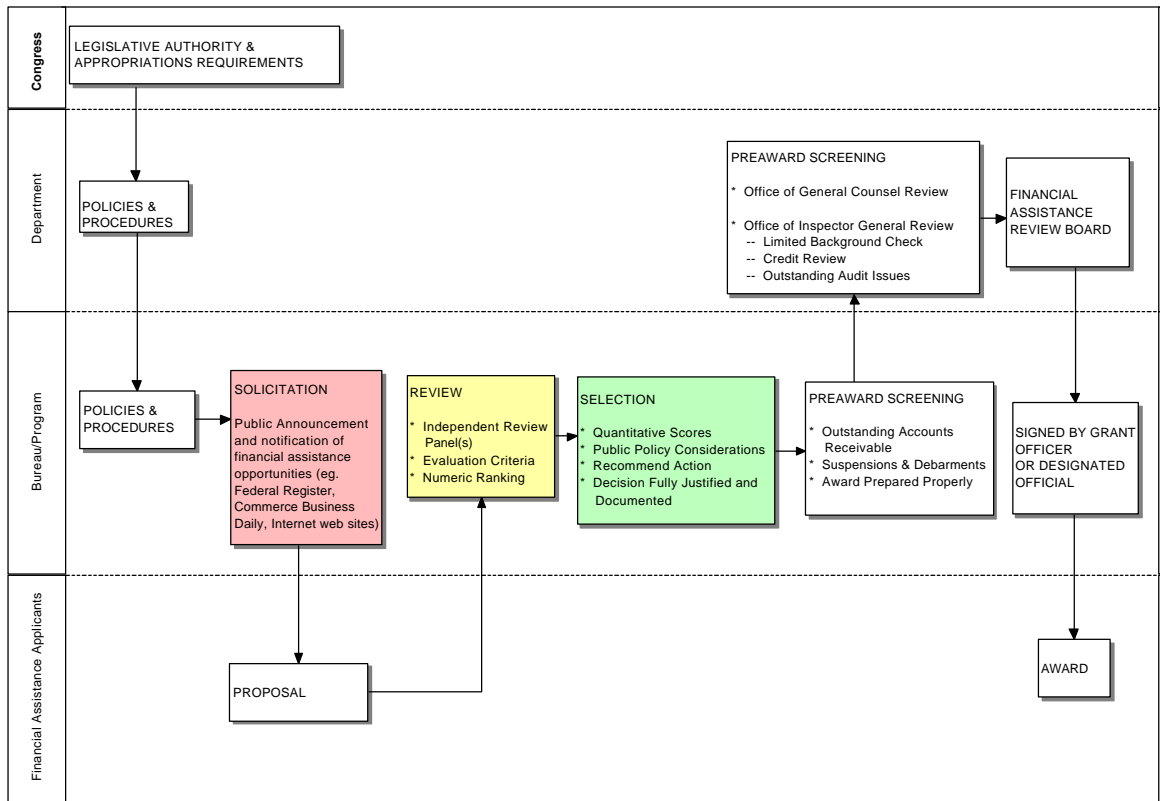
Also, OMB has issued the following circulars which set forth the policies and procedures to be followed in administering federal financial assistance programs:

- OMB Circular A-89, *Federal Domestic Assistance Program Information*, implements the Federal Program Information Act (P.L. 95-220) requiring agencies to systematically and periodically collect and distribute current information to the public on federal domestic assistance programs, which is accomplished through the semiannual publication of the *Catalog of Federal Domestic Assistance*.
- OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*, requires agencies to provide the public with advance notice in the *Federal Register*, or by other appropriate means, of their intended funding priorities for discretionary assistance programs unless such priorities are established by federal statute. Under A-102, when time permits, an agency must provide the public with an opportunity to comment on funding priorities. Finally, A-102 requires all grant awards over \$25,000 to be reviewed for consistency with agency priorities by a policy level official.
- OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*, requires agencies to provide the public with advance notice of their intended funding priorities for discretionary assistance programs unless such priorities are established by federal statute.
- OMB Circular A-123, *Management Accountability and Control*, implements the Federal Managers' Financial Integrity Act (P.L. 97-255) requiring agencies to establish written procedures for all programs and administrative activities, including financial assistance programs, that provide reasonable assurance that activities are effectively and efficiently managed to achieve agency goals.

Commerce has relied on these guidelines and circulars in developing and issuing policies and procedures for its discretionary funding programs. Department Administrative Order (DAO) 203-26, *Department of Commerce Grants Administration*, requires that (1) Commerce financial assistance awards be made on the basis of competitive reviews unless a special waiver is obtained, (2) competitive review processes meet minimum standards outlined in the DAO, and (3) all Commerce agencies publish, at least annually, a notice in the *Federal Register* soliciting award applications. In addition, noncompetitive awards, if any, should be adequately justified in writing as part of an adequate internal control system defined in OMB Circular A-123 and required by DAO 203-26, Section 4.02.i.

The chart presented below depicts the basic process and controls for the solicitation, review, and selection of financial assistance awards as set forth in DAO 203-26. The processes we reviewed during our audit are color coded for this chart and the NOAA/OAR process chart located in Appendix I.

Department of Commerce Financial Assistance Awards Process



PURPOSE AND SCOPE

This audit was conducted as part of a comprehensive review of the Department of Commerce's discretionary funding programs initiated at the request of the Chairman of the Senate Committee on Commerce, Science, and Transportation. The Chairman requested that the Inspectors General of the Departments of Commerce and Transportation and the National Science Foundation review the discretionary funding programs of their respective agencies to assess the manner in which discretionary funding decisions are made. More specifically, the Chairman requested that each IG review and report on the criteria developed, either statutorily or administratively, to guide agency officials in making discretionary spending decisions, and on the extent to which the criteria are appropriately applied.

We are conducting our Department-wide review in two phases: a survey phase (completed) and an individual program audit phase (on-going). During the survey phase, we identified and examined the body of laws, regulations, and other guidance applicable to the administration of federal financial assistance programs. We also examined the authorizing legislation, provided by Department officials, for each Commerce financial assistance program and classified each program as either a "full discretion" program or a "limited discretion" program, based on the extent to which the legislation limits the agency's authority to independently determine the recipients and funding levels of the awards made under the program. Finally, we examined the fiscal year 1997 appropriations legislation to identify legislatively mandated awards for each full discretion program.

During the second phase of our review, we are conducting individual audits of the award solicitation, review, and selection processes of each program we have classified as a "full discretion" program, including the Undersea Research Program. We are evaluating the adequacy of each program's established award procedures and criteria for evaluating individual applications. For those programs with procedures deemed to be adequate, we are ascertaining whether they were followed in making awards in fiscal year 1997. For those programs with procedures considered to be inadequate or lacking, we are reviewing how the fiscal year 1997 award decisions were made. Finally, we are examining the legislatively mandated projects identified for each program and determining their significance and impact on fiscal year 1997 award decisions. We plan to issue individual reports, with any appropriate recommendations, on each program, followed by a capping report summarizing the results of the individual audits and providing recommendations for the Department and/or its bureaus.

On July 21, 1998, the Acting Inspector General and the Chief Financial Officer and Assistant Secretary for Administration testified before the Senate Commerce, Science, and Transportation Committee on the Department's discretionary funding programs. The Acting IG reported on the results of the preliminary, survey phase of the OIG's review, and discussed some of the preliminary observations from the individual program audits.

This performance audit focused on awards made during fiscal year 1997 under the Undersea Research Program. Specifically, we:

- Reviewed the program authorization information provided by NOAA's Office of Legislative Affairs and information about the program published in the *CFDA* to identify criteria for funding decisions.
- Reviewed policies and procedures for soliciting, reviewing and selecting applications for funding (see Appendix I for flowchart of process). We also reviewed NOAA's *Grants and Cooperative Agreements Manual* as it applied to the application solicitation, review, and selection process and assessed whether it was adequate and in accordance with DAO 203-26, *Department of Commerce Grants Administration*, and Office of Federal Assistance Financial Assistance Notice No. 17, *Department of Commerce Guidelines for the Preparation of Federal Register Notices Announcing the Availability of Financial Assistance Funds -- Requests for Applications*.
- Compared the procedures with NOAA/OAR award practices for fiscal year 1997 to determine if the process contained adequate internal controls to provide for competitive, merit-based awards.
- Examined pertinent documents in individual program award files to determine if Departmental and NOAA policies and procedures were followed.
- Interviewed NOAA/OAR program office officials concerning NOAA/OAR's application solicitation, review, and selection procedures.
- Examined fiscal year 1997 appropriations legislation to identify legislatively mandated projects for this program.

We did not rely on computer-based data supplied by NOAA and the Department's Office of Executive Assistance Management (OEAM) and cited in the report, as a basis for our audit findings and recommendations. Consequently, we did not conduct tests of either the reliability of the data or the controls over the computer-based system that produced the data.

We performed the audit fieldwork at OAR's Undersea Research Program office in Silver Spring, Maryland, during January 1999. In September 1999, we issued a draft report to NOAA for review and comment. A copy of NOAA's complete response is included as Appendix II and is summarized on page 11 of this report. We conducted the audit in accordance with generally accepted government auditing standards, and under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated May 22, 1980, as amended.

FINDINGS AND RECOMMENDATIONS

We found that OAR's criteria, procedures, and practices for the solicitation, review, and selection of applications for awards under the Undersea Research Program did not comply with departmental and NOAA requirements. OAR does not administer the program as a competition-based financial assistance program. OAR has not developed and published merit-based evaluation criteria against which applications for funding can be reviewed, does not annually announce the program in the *Federal Register*, and makes all awards under this program noncompetitively in response to unsolicited proposals.

In addition, we reviewed the noncompetitive justifications for the four new awards made in fiscal year 1997 and found them to be inadequate because OAR neither provided sufficient support for the unique applicant capabilities cited nor justified an appropriate alternative basis for the award. OAR's practices do not comply with the Department's and NOAA's requirements to seek maximum program competition. We also found that reviews performed by the NOAA grants office of the proposed awards did not question OAR's lack of competitive award procedures or the adequacy of the noncompetitive award justifications. As a result, NOAA/OAR cannot provide reasonable assurance that awards made under the program are merit-based and represent the most effective means of achieving program objectives.

I. Undersea Research Program Is Not Administered as a Competition-Based Financial Assistance Program in Accordance with Federal and Departmental Requirements

The OAR Undersea Research Program is not being administered as a competition-based financial assistance program, as encouraged by federal laws and regulations and mandated by Department and NOAA policies and procedures. All of the fiscal year 1997 awards under the program were made noncompetitively in response to unsolicited proposals, and we found the written justifications prepared for the four new awards to be inadequate. Specifically, we found that OAR:

- Did not develop and publish merit-based evaluation criteria against which funding applications could be reviewed;
- Did not comply with the Department's and NOAA's requirement that a notice be placed in the *Federal Register*, at least annually, soliciting award applications; and
- Did not comply with the Department's and NOAA's requirements that (1) all financial assistance awards be made on the basis of a competitive review process, unless a special waiver is obtained, and (2) the competitive review process meet minimum standards established by the Department.

A. OAR did not develop and publish merit-based evaluation criteria

The NOAA *Grants and Cooperative Agreements Policy Manual*, Chapter 1, Section A.4., requires that applications for financial assistance be reviewed by a panel of independent reviewers in accordance with published criteria. The manual states that the criteria used for evaluating applications must be published as part of the request for applications and prohibits scoring applications against unpublished criteria. However, OAR did not develop and publish merit-based evaluation criteria, as required by DAO 203-26, Sections 4.02 a. and b., and Financial Assistance Notice No. 17, Sections .01 and .03 b.7. (1), against which program applications could be reviewed.

In particular, the agency did not place a notice in the *Federal Register* soliciting competing applications and announcing the criteria to be used in evaluating applications for funding by the Undersea Research Program for fiscal year 1997. Also, the Undersea Research program summary, published in the *CFDA*, does not cite program-specific evaluation criteria. The summary simply states: "Proposals are evaluated on the degree to which they contribute to the goals and objectives of NOAA along with their relevance to national science requirements for the marine environment, and the extent of expected benefits, scientific quality, cost effectiveness, and other factors." Criteria used to evaluate applications for federal financial assistance must not be general in nature, but as specific as possible, as required by DAO 203-26, Section 4.02a.

B. Solicitation and review process does not comply with competitive requirements

Department Administrative Order 203-26, Section 4.02.b., requires Commerce bureaus to publish an annual notice in the *Federal Register* for each financial assistance program to announce the availability of funding, to solicit applications for funding, and to specify the criteria and the process to be used in evaluating such applications. It also encourages the bureaus to publish notices in other widely distributed publications, such as the *Commerce Business Daily*, to ensure widespread solicitation of applications. Moreover, NOAA's *Grants and Cooperative Agreements Policy Manual*, Chapter 1, Section A.4., states that it is NOAA's policy to seek maximum competition for its discretionary grants and cooperative agreements.

In addition, DAO 203-26, Section 4.02.a., requires the establishment of selection criteria for use in evaluating applications for new awards. Section 4.02.h. requires awards be made on the basis of competitive review, and Section 4.02.h.1.(e) requires the use of the selection criteria in evaluating individual applications. Unless a program receives a waiver of competitive review requirements, awards under the program are generally required to be made on the basis of competitive review.

However, despite the Department and NOAA policies, OAR did not announce the Undersea Research Program in the *Federal Register* or the *Commerce Business Daily* and did not establish

competitive award selection criteria. By not announcing the program and establishing competitive award selection criteria as required, OAR did not comply with departmental or NOAA policies and missed an important opportunity to maximize program competition. In addition, OAR may be encouraging the use of noncompetitive awards by failing to develop competitive selection criteria.

C. Noncompetitive awards lacked appropriate or adequate justification

In fiscal year 1997, NOAA/OAR awarded four new grants, five renewals and four supplemental awards totaling nearly \$10.9 million to five universities, a public foundation and a nonprofit research institution. In all cases, the awards were made noncompetitively on the basis of unsolicited proposals submitted for OAR funding consideration. The written justification for each of the new awards stated that the proposed recipient possessed unique capabilities that made it either the best or the only organization qualified to do the work. However, there was little, or no documented evidence to support these conclusions. The following is a synopsis of the four new awards reviewed during our audit.

NOAA/OAR received two closely related unsolicited proposals from Rutgers University, and funded both proposals through a \$1.7 million grant (No. NA76RU0165) to the university in February 1997. The grant required a \$300,000 matching contribution from the university, bringing the total budget to \$2.0 million. The award's stated purpose was to continue the existing research program at the Mid-Atlantic Bight National Undersea Research Center.

The written noncompetitive justification for the Rutgers grant was prepared to justify a sole source award, indicating that the grant was to support the university's multi-year undersea research program and that the technical expertise required to establish and manage the program was not available outside the existing undersea research center network. The justification also indicated that the research work supported by OAR would be adversely affected if a new center program had to be developed. However, there was no factual basis provided to support these conclusory statements. NOAA claims that Rutgers had been selected to operate a NURP center in fiscal year 1992 in order to meet congressional intent, but we found no record of a similar directive in the 1997 appropriation process for the program and the agency did not attempt to justify the 1997 award on that basis.

NOAA/OAR also received two closely related unsolicited proposals from the University of Connecticut, and funded both proposals through a \$1.55 million grant (No. NA76RU0060) to the university in April 1997. The grant required a \$25,000 matching contribution from the university, bringing the total budget to \$1.575 million. The award's stated purpose was to continue the existing research program at the National Undersea Research Center for the North Atlantic and Great Lakes.

The written noncompetitive justification for the Connecticut grant was prepared to justify a sole source award, and was virtually identical to that used to justify the sole source award to Rutgers. Again, there was no documented factual basis provided to support the conclusory statements offered to justify Connecticut's unique capabilities. According to NOAA, the University of Connecticut was originally designated as a recipient of NURP grant funds under the fiscal year 1983 Appropriations Act. However, there was no such designation in the program's fiscal year 1997 appropriation process and there was no documentation that NOAA/OAR attempted to justify the award on that basis.

NOAA/OAR received an unsolicited proposal from the Perry Foundation, Inc., a public foundation, and awarded a \$1.3 million grant (No. NA76RU0026) to the foundation in February 1997. The grant did not require a matching contribution. The award's stated purpose was to continue the existing undersea research program at the Caribbean Marine Research Center.

The written noncompetitive justification for the Perry Foundation grant indicated that it was to support the foundation's continuing research and that the technical expertise required to establish and manage the research program was not available outside the existing undersea research center network. However, there was no documented factual basis provided to support these conclusory statements. Although NOAA claims that the foundation was first funded as a NURP center by congressional direction, we found no such direction for fiscal year 1997; nor did the agency attempt to justify the award on that basis.

Finally, OAR received an unsolicited proposal from the Woods Hole Oceanographic Institution, a nonprofit research institution, and awarded a \$60,000 grant (No. NA76RU0501) to the institution in August 1997, with no requirement for a matching contribution. The written noncompetitive justification for the award indicated that its purpose was to fund the use of an underwater research vehicle and deep submergence facility and that the institution was the only organization with the required technical expertise to do so. The justification also referred to a memorandum of agreement with the institution through which NOAA, the U.S. Navy, and the National Science Foundation agreed to share the costs of making this technology available to the research community. The justification stated that the undersea research work supported by OAR would be adversely affected if a new facility had to be developed.

This noncompetitive award justification was similar to the justifications written for the three preceding awards. But, here too, there was no documented factual basis provided to support the agency's conclusions regarding Woods Hole's unique capabilities, and *OAR did not adequately justify the award on any other appropriate basis.*

Unsolicited proposals are applications for financial assistance that are not submitted in response to a formal solicitation notice published in the *Federal Register*. Because unsolicited proposals are a means by which unique or innovative ideas can be made available to accomplish specific

projects, scientific organizations like NOAA and OAR encourage their submission. DAO 203-26, Section 4.02.i., allows the receipt of unsolicited proposals, but states that no unsolicited proposal may be funded outside the competitive process if the proposal falls within the program goals of a competitive program. In addition, the receipt of a technically acceptable unsolicited proposal does not, in itself, justify a noncompetitive award. DAO 203-26, Section 4.02.i., also states that the decision to fund an unsolicited proposal must be fully justified and included in the official grant file.

While OAR wrote noncompetitive justifications for the four new awards, the justifications were perfunctory and conclusory, and failed to cite or otherwise document any factual bases for the assertions that the applicants possessed unique capabilities. According to NOAA, the sole source justifications were based on the “personal knowledge” of program officials; however, no steps were taken to substantiate this information. OAR did not even comply with the basic departmental requirement that a notice be published in the *Federal Register* soliciting applications for fiscal year 1997 funding under the Undersea Research Program, which could have provided adequate validation of its conclusions that the organizations that submitted unsolicited proposals were the only ones that could perform the required work.

II NOAA’s Grant Management Office Reviews of Proposed OAR Awards Were Not Effective

Reviews performed by the NOAA grants management office of the four new proposed awards did not question OAR’s lack of competitive award procedures or the validity of the noncompetitive award justifications. The Acting Assistant Administrator for Oceanic and Atmospheric Research forwarded, as required, the program office’s justifications and related documents for the four new proposed noncompetitive awards to the grants office for review and approval. However, the grants office review of the proposed awards did not ensure the OAR program office’s compliance with applicable Department and NOAA competitive requirements.

DAO 203-26, Section 4.01., requires that each organization unit establish a central liaison to ensure that its programs comply with federal, departmental and organization grant requirements and to review grant documents for compliance. The Grants Management Division, within NOAA’s Office of Finance and Administration, fulfills that responsibility for NOAA.

The official grant files do not indicate that the Grants Management Division questioned why the OAR program office did not prepare and submit the required annual *Federal Register* program announcement. The files also do not show whether the grants office determined if the noncompetitive justifications were factually based or if the program office had made any attempt to identify other qualified sources before submitting the noncompetitive awards. Grants Management Division personnel stated that they relied on and accepted as valid the technical descriptions of perceived unique capabilities presented in the program office’s award

justifications. Grants Management Division personnel limited their review of the justifications to determining whether they addressed one or more of the acceptable reasons for a noncompetitive award, but did not attempt to verify the information. Therefore, we believe the reviews were not effective in ensuring the program office's compliance with Department and NOAA competitive policies.

III. NOAA Response

NOAA's response to the draft report states that it is committed to ensuring that its discretionary programs are consistent with departmental policy and that the agency will pursue all options to maximize the use of competition in the award of its grants and cooperative agreements. NOAA agrees with the draft report recommendation that proposed noncompetitive awards be effectively reviewed and states that it will require internal reviews for proposed competitive and noncompetitive awards to determine their compliance with policy.

However, NOAA generally disagreed with the report conclusions and recommendations regarding awards made under the Undersea Research Program. It contends that the program does not operate as a true discretionary program because its existence is entirely attributable to congressional action, and not agency budget requests. NOAA states that because congressional appropriations frequently identify specific recipients, it has developed long-term relationships with those recipients and attempts to modify such relationships have met with strong congressional opposition. The agency also claims that the lack of competition in awarding NURP grants is mitigated by the fact that the centers themselves fund research projects that are competitively solicited and reviewed.

NOAA states that past appropriation language designated two of the recipients as undersea research centers and directed that a regional competition be held to select the third recipient. Regarding the remaining recipient, the Woods Hole Oceanographic Institution, NOAA states that the institution is not an undersea research center, but operates the specialized National Deep Submergence Facility. NOAA contends that the facility has unique undersea research vehicles that are owned by the federal government and operated for the benefit of the oceanographic research community, and that it has a memorandum of understanding with two other federal agencies to share the facility's operating costs.

NOAA also states that departmental policy allows for noncompetitive awards and that it uses the awards primarily to maintain its productive relationships with institutions which satisfy congressional intent. NOAA disagrees that market surveys must be performed to determine if other prospective recipients are interested or capable of performing the work and states that departmental policy does not require the existence of only one source for noncompetitive awards. Finally, NOAA states that unique capability is not the only noncompetitive justification and that other criteria such as an applicant's specialized facilities or equipment, or substantial project investment are just as valid. NOAA's response is included in this report as Appendix II.

IV. OIG Comments

First and foremost, we welcome NOAA's commitment to ensure that its discretionary financial assistance programs comply with departmental policy and maximize the use of competition in its grants and cooperative agreements. However, we disagree with key aspects of NOAA's response to the report conclusions and recommendations regarding the Undersea Research Program. While NOAA argues that the Undersea Research Program is not a discretionary program, a review of the fiscal year 1997 appropriation process for the program does not indicate that the agency's authority to independently determine the recipients and funding levels for program awards was so severely limited as to effectively eliminate agency discretion. Moreover, the fact that NOAA prepared written justifications for *not* competing the 1997 awards suggests that the agency understood that competitive policies were applicable. In addition, it is important to note that the use of competitive award procedures by program recipients does not excuse NOAA from using competitive procedures in making the primary awards.

We recognize that Congress has been responsible for continuing the NURP program's annual funding, and in some years has allocated funds to specific recipients. However, as noted above, the fiscal year 1997 congressional appropriation process did not allocate program funds to any specific recipients; therefore, departmental and NOAA competitive policies were applicable and, *absent acceptable justifications for noncompetitive awards*, a competitive process should have been used to make the awards that year. We also recognize that departmental policy *allows* for noncompetitive awards under certain conditions and that such awards can be justified by one or more acceptable reasons.

NOAA's comments regarding congressionally-directed and institutional awards reflect policy and programmatic decisions within agency discretion; if the justifications are supported and adequately and accurately documented, such awards would not be inconsistent with federal or departmental policy. However, none of the awards that we questioned were being justified on either of those bases, but rather on the basis that the *recipient was the only source that could meet the program requirements*.

Because NOAA's response did not provide any significant additional data or explanation, we have not modified our recommendations. We reiterate our finding that all fiscal year 1997 awards under the Undersea Research Program were made on a noncompetitive basis, rendering the entire program noncompetitive, which is inconsistent with federal and departmental policy.

V. Recommendations

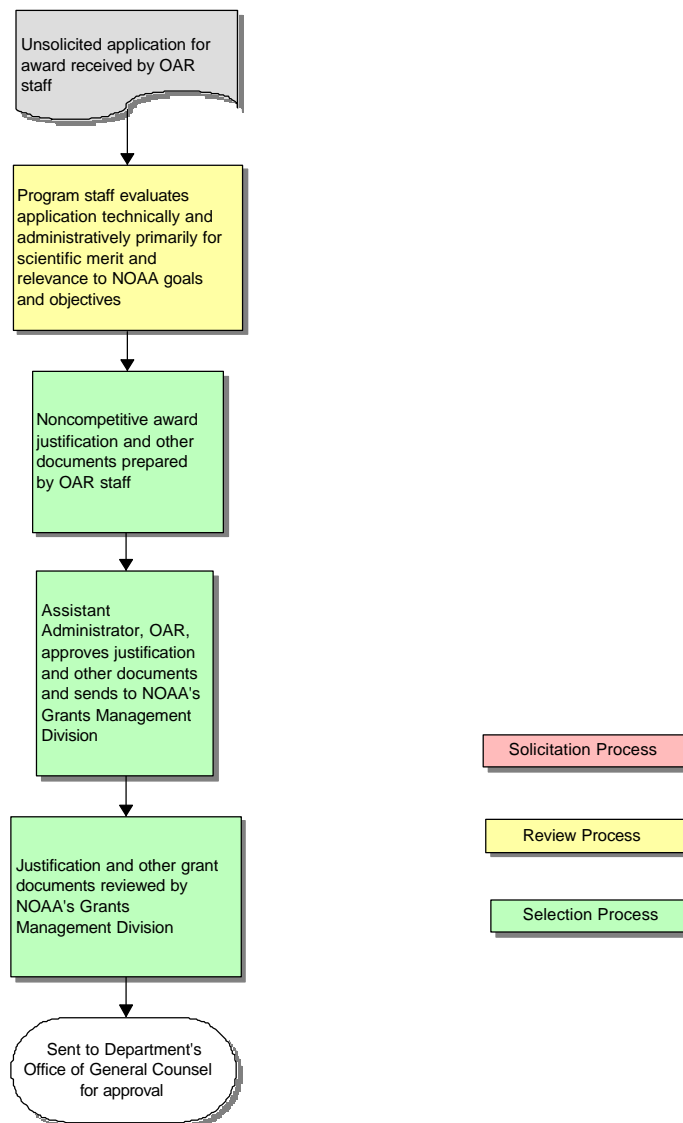
We recommend that the Assistant Administrator for Oceanic and Atmospheric Research ensure that all financial assistance awards under the Undersea Research Program are made based on a competitive merit-based process, unless otherwise mandated by law or adequately justified, and that the award process complies with Department policies and procedures and includes the following four elements:

1. Widespread solicitation of eligible applications and disclosure of essential application and program information in written solicitations, as required by DAO 203-26, Sections 4.02a. and b., and Financial Assistance Notice No. 17, Sections .01 and .03.;
2. Independent application reviews that consistently apply published evaluation criteria, as required by DAO 203-26, Section 4.02h.1.;
3. Written justifications for award decisions that deviate from recommendations made by application reviewers, as required by DAO 203-26, Section 4.05b.; and
4. Adequate written justifications for noncompetitive awards, as required by DAO 203-26, Section 4.02i., which should, in the case of “sole source” awards, thoroughly document appropriate market search efforts to validate the determination that there is only one source available to perform the anticipated award. Also, justifications for noncompetitive awards that are made on a basis other than sole source, e.g., to meet congressional intent or extend an existing award, should reflect the appropriate basis for the lack of competition.

We also recommend that the Chief Financial Officer/Chief Administrative Officer, as the Director of Office of Finance and Administration, which includes the Grants Management Division, require that grants officer reviews of proposed noncompetitive awards include procedures designed to objectively determine compliance with Federal, Department, and NOAA competitive requirements.

APPENDIX I

NOAA/OAR Procedures for Review and Selection of Awards






UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
CHIEF FINANCIAL OFFICER/CHIEF ADMINISTRATIVE OFFICER

NOV 12 1999

MEMORANDUM FOR: Johnnie E. Frazier
Inspector General

FROM: Paul F. Roberts 
Chief Financial Officer/
Chief Administrative Officer

SUBJECT: OIG Draft Report: OAR's Undersea Research
Program Awards Were Not Competitively Selected,
CFDA No. 11.430 Report No. ATL-11654-9-XXXX

Thank you for the opportunity to provide comments on the subject draft audit report on the Office of Oceanic and Atmospheric Research's National Undersea Research Program (NURP).

NOAA is committed to ensuring that its discretionary programs are consistent with departmental policy, responsive to its research needs, and use a competitive process. NOAA will pursue all options to increase the use of competition in grants and cooperative agreements to the maximum extent possible.

It is important to recognize that the NURP is not a true discretionary program. The program's existence is due entirely to Congressional action. While it may be classified as such for purposes of this audit, in reality, the program operates as a non-discretionary program. For the year examined in the study, fiscal year 1997, and the previous fourteen years, funding for the program was not requested in the Administration's budget request to Congress. However, the Congress has expressed its strong feelings about the continuation of the NURP by placing funds in NOAA's appropriation for each of those years.

These funds are accompanied by Congressional direction as to how they are to be expended, frequently identifying specific recipients or programs. Therefore, to carry out the intent of the Congress, institutional awards have been developed over the years to establish long-term partnerships with identified



recipients. Attempts to modify these relationships in ways other than prescribed by the Congress have been met with strong Congressional opposition.

To ensure that the NURP is consistent with departmental policies regarding the use of a competitive process for allocating funds, we have sought to structure institutional arrangements to maximize competition through awards made at the institutional level. Therefore, awards made by NURP Centers are based on procedures that meet established competitive standards. Competition at this secondary level, however, was excluded from consideration because it was defined as being outside the scope of the study.

Again, thank you for the opportunity to comment on the draft report. A more detailed response to the report's findings and recommendations is attached.

Attachment

GENERAL COMMENTS

The draft report addresses new grants to four institutions in FY 1997. Specific comments follow.

A) Rutgers State University - This university was chosen as a NURP Center in FY 1992 as a result of a regional competition directed in appropriation conference language that year. Under the NURP reinvention, which is based upon principles that support competitive research and responsible management, this program is scheduled for an outside program review in the spring of 2001.

B) University of Connecticut - This university was selected as a NURP Center by Congressional direction through language in the FY 1983 appropriation. Since that time the center has become a leader in the development and application of remotely operated vehicle technologies and in scientific studies of the Great Lakes and Northwestern Atlantic. The program was reviewed under the previous recertification system in 1993 and is scheduled for a review under the reinvented system in 2002.

C) Perry Foundation, Inc. - This private foundation was established as a NURP Center by Congressional direction in 1985. It is scheduled for an outside program review under the reinvention in February 2000.

D) Woods Hole Oceanographic Institution - Unlike the previous organizations, Woods Hole Oceanographic Institution is not a NURP Center. This group operates the National Deep Submergence Facility (NDSF) under a grant from the National Science Foundation. The NDSF is a collection of undersea research vehicles owned by the U.S. Government and operated for the benefit of the oceanographic research community. It includes the ALVIN, a manned submersible capable of diving to 4,500 meters. The NDSF is the only facility with such capabilities that is not owned by a foreign government. Because of the unique nature of this equipment, and the desire to make it available to the research community on the broadest possible basis, the three federal agencies with principal responsibility for ocean research have agreed through a Memorandum of Understanding to share the costs for making this technology available. Thus NOAA, the U.S. Navy, and the National Science Foundation support the operations of the NDSF.

RESPONSE TO RECOMMENDATIONS

OIG Recommendation 1: Widespread solicitation of eligible applications and disclosure of essential application and program information in written solicitations, as required by DAO 203-26, Sections 4.02a. and b., and Financial Assistance Notice No. 17, Sections .01 and .03.

NOAA Response: As stated previously, the NURP does not have any discretionary funds because of the appropriation language and therefore the funding supports the NURP Centers. Those centers, in turn, fund peer-reviewed projects that are solicited by the Centers and reviewed and awarded in an open competitive process.

OIG Recommendation 2: Independent application reviews that consistently apply published evaluation criteria, as required by DAC 203-26, Section 4.02h.1.

NOAA Response: The NURP does not have any discretionary funds because of the appropriation language and therefore the funding supports the NURP Centers. Those centers, in turn, fund peer-reviewed projects that are solicited by the Centers and reviewed and awarded in an open competitive process.

OIG Recommendation 3: Written justification for award decisions that deviate from recommendations made by application reviewers, as required by DAO 203-26, Section 4.05b.

NOAA Response: The NURP does not have any discretionary funds because of the appropriation language and therefore the funding supports the NURP Centers. Those centers, in turn, fund peer-reviewed projects that are solicited by the Centers and reviewed and awarded in an open competitive process.

OIG Recommendation 4: Adequate written justifications for noncompetitive awards, required by DAO 203-26, Section 4.02i, which document appropriate market search efforts to validate the determination that there is only one source for the anticipated awards. The Market search should include, at a minimum, a preaward notice in the FEDERAL REGISTER stating that the agency expects to make a noncompetitive award and inviting other qualified parties to inquire.

NOAA Response: DOC policy allows for noncompetitive awards, when necessary. NURP uses the awards primarily to maintain productive relationships with institutions, which satisfy the intent of Congress.

NOAA does not agree that market surveys must be performed to determine if other institutions are interested or capable of performing similar work. The Department's policy does not require the existence of only one source for anticipated noncompetitive awards. This is not required by either statute, regulations, or policy, and it is too narrow of a recommendation to implement because unique capability is not the only criteria used to justify a sole source award. Other criteria such as an applicant's specialized facilities or equipment, or substantial investment in a project are just as valid.

OIG Recommendation 5: We also recommend that the Chief Financial Officer/Chief Administrative Officer, as the Director of Office of Finance and Administration, which includes the Grants Management Division, require that grants officer reviews of proposed noncompetitive awards include procedures designed to objectively determine compliance with Department and NOAA competitive requirements.

NOAA Response: NOAA agrees that reviews should determine compliance with Department and NOAA competitive requirements. NOAA will require internal reviews for proposed competitive and noncompetitive awards for conformity to policy.